IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

Crl.MC.No. 2138 of 2007()

CC.80/2002 of JUDL.MAGISTRATE OF FIRST CLASS-III, PUNALUR

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PETITIONER: ACCUSED

KURUVILA ABRAHAM @ ANIYACHAN,
ATTUMEL VARAMPATHU VEEDU,
C/O.JOSE RAJ PETROL PUMP,
PUNALUR P.O.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS: COMPLAINANT & STATE

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1. T.RAJENDRAN NAIR,
ANANDA BHAVAN, KARAVALOOR P.O.,
PATHANAPURAM.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
OFFICE OF THE ADVOCATE GENERAL,
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/07/2007, A/W. CRMC 2139 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.Nos. 2138 & 2139 of 2007

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Dated this the 4th day of July, 2007

O R D E R

The petitioner faces indictment in two different prosecutions, both under Section 138 of the N.I. Act, but initiated by different complainants. Cognizance has been taken. The petitioner did not appear before the learned Magistrate in either case. According to the petitioner he had no knowledge of the proceeding. But reckoning him as an absconding accused, the learned Magistrate has issued coercive processes against the petitioner and has transferred the case to the list of long pending cases. According to the petitioner he is absolutely innocent. Her absence was not willful and deliberate.

2. The learned counsel for the petitioner submits that the petitioner is willing to appear before the learned Magistrate. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these circumstances prayed that appropriate directions may be issued to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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